Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")	)	CG Docket No. 11-116
	)	
Consumer Information and Disclosure	)	CG Docket No. 09-158
	)	
Truth-in-Billing and Billing Format	)	CG Docket No. 98-170

REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

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I. INTRODUCTION AND SUMMARY

CTIA – The Wireless Association® ("CTIA")[1] respectfully submits these reply comments in response to the Notice of Proposed Rulemaking ("*NPRM*") released by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding.[2] The record and data cited in the *NPRM* and responsive comments demonstrate that cramming is not a significant problem for wireless consumers. In fact, the Commission's own cramming complaint data amounted to a mere ***0.00016 percent – i.e., less than two ten-thousandths of a percent –*** and does not establish a significant problem with cramming amongst wireless providers. In an economic environment such as the one facing the country, seeking out market-harming regulations, especially for an ecosystem such as the mobile market that is driving numerous consumer and economy-improving results, makes absolutely no sense. To

[1] CTIA – The Wireless Association® is the international organization of the wireless communications

[2] *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")*, Notice of Proposed Rulemaking, 26 FCC Rcd 10021 (2011) ("*NPRM*").

consider them when the evidence of harm doesn't exist is even worse. Comments calling for the application of cramming rules to wireless providers also ignore the paucity of wireless cramming complaints and contradict the directives of President Obama and Chairman Genachowski to avoid unnecessary regulation. Additionally, the record demonstrates that wireless companies already take significant steps to protect consumers and prevent cramming. Indeed, many carriers already independently offer the very same solutions suggested by some commenters. Finally, a number of the proposed rules would negatively impact consumers' ability to obtain valuable content and services when they want them, wherever they may be.

The wireless industry is dedicated to providing a high quality customer experience to wireless customers, and the record reflects the numerous steps wireless carriers are taking to ensure that superior customer relationship. Given this industry wide commitment to protecting consumers and the dearth of wireless cramming complaints, there is no reason for the Commission to impose cramming requirements on wireless providers.

II. INITIAL COMMENTS SHOW THAT CRAMMING IN THE WIRELESS INDUSTRY IS NOT A WIDESPREAD PROBLEM AND CUSTOMERS WANT THE TYPES OF SERVICES ENABLED BY THIRD-PARTY BILLING.

CTIA's initial comments in this proceeding demonstrated that the Commission's claimed number of wireless cramming complaints[3] amounted to a mere ***0.00016 percent – i.e., less than two ten-thousandths of a percent*** – and do not establish a significant problem with cramming amongst wireless providers.[4] No commenter set forth any persuasive information demonstrating

[3] *See NPRM* ¶ 4 n.11

[4] *See* Comments of CTIA – The Wireless Association®, CG Docket 11-116 at 4-5 (filed Oct. 24, 2011). The Commission asserts that 16% of cramming complaints received by the Commission were wireless cramming complaints, meaning the Commission received only 419 wireless service cramming complaints, per year on average from 2008 through 2010. During that same time

a significant number of wireless cramming complaints. While the Massachusetts Attorney General offered some discussion of wireless cramming complaints, the number of complaints was even lower than that of the FCC. Between 2006 and October 2011, the Attorney General's Office received only 54 wireless cramming complaints, or an average of just over 10 wireless cramming complaints per year.[5] Over approximately the same time period, Massachusetts had an average of more than 5.7 million mobile wireless telephone subscribers, and as of December 2010 had approximately 6.3 million mobile wireless telephone subscribers.[6] Here, as with the FCC's numbers, the ratio of average complaints to average subscribers is absurdly low, and yields a cramming complaint percentage of approximately 0.0000019 percent. Given this miniscule complaint data, enacting onerous regulatory requirements is unwarranted and would be unreasonable.

Perhaps the greatest argument against more stringent wireless cramming requirements is that they have the potential to stifle the types of services that consumers are demanding, including the burgeoning mobile applications market. The mobile applications market has exploded over the last several years giving rise to more than 28 non-carrier applications stores offering more than 1.4 million applications. Additionally, 1 in 4 American adults actively use applications,[7] and the average smartphone has 22 applications, with the average feature phone

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period, there were approximately 270 million active U.S. wireless subscribers, so the Commission's cramming complaint percentage was approximately 0.00016 percent.

[5] Comments of the Massachusetts Office of the Attorney General, CG Docket No. 11-116 at 10-11 (filed Oct. 24, 2011).

[6] CTIA, *CTIA's Wireless Industry Indices* 41-45 (Nov. 2011).

[7] *See* Pew Internet, *The Rise of the Apps Culture* (Sept. 14, 2011), *available at* http://pewinternet.org/Reports/2010/The-Rise-of-Apps-Culture/Overview.aspx.

having 10 applications.[8] Consumers participating in the applications marketplace can simplify their user experience, and ensure the safety of their financial information, by having their wireless applications charged to their wireless bill. For instance, the Android marketplace offers this service with three of the four largest wireless providers.[9] Beyond the applications market, carriers are responding to consumer demands for mobile payment services by partnering with specialty payment networks to give consumers the functionality they demand.[10] Applying a ban on third-party billing services, or limiting access to these services, would frustrate consumer wishes, squelch innovation in this nascent market sector, and simply drive customers seeking mobile payment services to other solutions, such as "in app" billing.

Given the exceedingly low number of wireless cramming complaints, and the potential benefits that third-party billing services can provide, regulatory action against the wireless sector would contradict President Obama's express desire for government agencies to adopt new regulations "only after consideration of their costs and benefits (both quantitative and qualitative)."[11] The President also asserted that government agencies should "identify and use

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[8] Nielsen, *The State of Mobile Apps* (June 1, 2011), *available at* http://blog.nielsen.com/nielsenwire/online_mobile/the-state-of-mobile-apps/ (last accessed Nov. 28, 2011).

[9] *See* Eric Chu, *More Payment Options in Android Market* (Dec. 22, 2010), http://android-developers.blogspot.com/2010/12/more-payment-options-in-android-market_22.html (announcing that AT&T will allow direct carrier billing for Android market applications and discussing a similar agreement with T-Mobile); *see also* Press Release, Sprint, Carrier Billing Now Available on Sprint Android Phones (April 13, 2011), http://community.sprint.com/baw/community/sprintblogs/announcements/blog/2011/04/13/carrier-billing-now-available-on-sprint-android-phones.

[10] *See* Press Release, Payfone, Verizon Wireless and Payfone Power New Mobile Payment Solution (June 13, 2011), *available at* http://www.payfone.com/press-release/verizon-wireless-and-payfone-power-new-mobile-payment-solution; Press Release, T-Mobile, T-Mobile USA to Extend Direct Carrier Billing to Digital Content and Services (Aug. 2, 2011).

[11] President Barack Obama, Executive Order 13579 (July 11, 2011), 76 Fed. Reg. 41857 (2011).

the best, most innovative, and *least burdensome* tools for achieving regulatory ends;"[12] the Chairman has embraced the President's approach and expressed a willingness to "proactively explore[] creative alternatives to rules."[13] The wireless industry has developed numerous "creative alternatives," to maximize consumer satisfaction and ensure that the nascent mobile payments market continues to develop in a responsible manner.

III. WIRELESS INDUSTRY EFFORTS ADEQUATELY ADDRESS POTENTIAL CRAMMING EXPOSURE FOR WIRELESS CONSUMERS.

A. The record demonstrates that the wireless industry has implemented significant measures to protect subscribers from fraudulent billing practices.

Given the highly competitive wireless marketplace, wireless carriers take numerous steps to prevent potential cramming problems and ensure customer satisfaction. To this end, carriers participate in numerous voluntary efforts to address consumer issues, like CTIA's Consumer Code for Wireless Service and the Mobile Marketing Association's ("MMA") Best Practices. Additionally, carriers go beyond these basic requirements, offering consumers additional protections and working with third-party aggregators to ensure that customers are not subject to fraudulent charges.

All Tier I carriers, as well as several other carriers, have signed on to participate in both CTIA's Consumer Code and the MMA's Best Practices.[14] The MMA's guidelines provide

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[12] *Id.* (emphasis added).

[13] Julius Genachowski, Chairman, Federal Communications Commission, Remarks at The Georgetown Center for Business and Public Policy's Evolution of Regulation Series at 6 (Nov. 7, 2011), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-310876A1.pdf.

[14] Comments of AT&T Inc., CG Docket No. 11-116 at 10-11 (Oct. 24, 2011); Comments of Verizon and Verizon Wireless, CG Docket No. 11-116 at 6-7, 10-11 (Oct. 24, 2011); Comments of T-Mobile USA, Inc., CG Docket No. 11-116 at 3-5 (Oct. 24, 2011); Comments of Sprint Nextel Corp., CG Docket No. 11-116 at 6-7, 11 (Oct. 24, 2011); Comments of Leap Wireless Int., Inc. and Cricket Comm., Inc., CG Docket No. 11-116 at 3-4 (Oct. 24, 2011).

significant consumer protections, requiring carriers to obtain double opt-in for premium text services, offer clear disclosure of costs at the time of sale, and participate in an industry wide auditing effort.[15] Beyond these basic requirements, the record also provides examples of other carrier initiatives such as free third-party blocking services (which all Tier I carriers offer)[16] and limitations on what can be added to a customer's phone bill, including caps for a particular service or caps on aggregate services during a billing cycle.[17]

The record also illustrates the requirements that carriers place on their third-party billing aggregators to ensure high levels of subscriber satisfaction. AT&T, for instance, pre-screens all third-party content programs before they are commercially available to customers, and has refund rate thresholds for its aggregators, which trigger further investigation if exceeded.[18] Sprint Nextel gives billing aggregators a financial incentive, imposing financial penalties on aggregators that do not abide by Sprint Nextel's compliance policies or have high refund rates.[19] All of these robust consumer protections are industry-driven solutions implemented in response to the competitive nature of the wireless ecosystem. Oddly, the comments signed by 17

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[15] *See* Mobile Marketing Association, *U.S. Consumer Best Practices*, Version 6.1 (April 1, 2011), *available at* http://mmaglobal.com/Consumer_Best%20Practices_6.1%20Update-02May2011FINAL_MMA.pdf.

[16] Comments of AT&T Inc., CG Docket No. 11-116 at 10 (Oct. 24, 2011); Comments of Verizon and Verizon Wireless, CG Docket No. 11-116 at 9 (Oct. 24, 2011); Comments of T-Mobile USA, Inc., CG Docket No. 11-116 at 6 (Oct. 24, 2011); Comments of Sprint Nextel Corp., CG Docket No. 11-116 at 11 (Oct. 24, 2011).

[17] *See, e.g.*, Comments of Verizon and Verizon Wireless, CG Docket No. 11-116 at 7 (Oct. 24, 2011) (asserting that Verizon limits the charge for a premium short message service to $9.99 and imposes an aggregate monthly cap for purchases of premium short message service programs); Comments of T-Mobile USA, Inc., CG Docket No. 11-116 at 6 (pointing out that T-Mobile has a per transaction and monthly basis cap in order to "mitigate financial risks to subscribers").

[18] Comments of AT&T Inc., CG Docket No. 11-116 at 9-10 (Oct. 24, 2011).

[19] Comments of Sprint Nextel Corp., CG Docket No. 11-116 at 7 (Oct. 24, 2011).

Attorneys General recognize this fact,[20] but still call for a regulatory obligation—an obligation which would not give industry participants the flexibility to implement consumer protections in a way that does not overly burden the nascent mobile payments marketplace.

B. Comments calling for regulatory requirements beyond the practices already implemented would place an unreasonable burden on wireless services and not achieve any greater consumer protections.

Some comments criticize existing industry standards, asserting that they do not go far enough. However, the standards in place are reasonable and practicable approaches. The California Public Utilities Commission ("CPUC") asserts that the MMA is not sufficient and would violate California's consumer standards because it might still allow someone who is not the subscriber, such as a dependent child on a subscriber's plan, to make purchases.[21] However, wireless providers already have plans in place that allow a subscriber to limit the types of access users can gain from their own device; for instance, a parent who is the account holder of a family plan can completely block a child's access to the Internet from the child's device or limit Internet and messaging access.[22] In other instances, a provider will notify a subscriber when a purchase

[20] Comments of Eric T. Schneiderman, New York State Attorney General, *et al*., CG Docket No. 11-116 at 27-28 (Oct. 24, 2011) (acknowledging that the wireless industry has taken significant steps to protect consumers, but also calling for a free third-party blocking option and a double opt-in requirement, which the record demonstrates has already been broadly adopted throughout the wireless sector).

[21] Comments of the California Public Utilities Commission, CG Docket No. 11-116 at 10-11 (Oct. 24, 2011).

[22] *See*, *e.g.*, Sprint, *Control Your Account Online*, http://shop.sprint.com/mysprint/services_solutions/details.jsp?detId=account_controls&catId=service_safety_control&catName=Safety and Control&detName=Account Controls (last visited Nov. 28, 2011) (detailing the limitations consumers can place on their device or the device of a child on their plan); T-Mobile, *Family Friendly Features*, http://www.t-mobile.com/shop/addons/services/information.aspx?PAsset=FamilyWireless&tp=Svc_Tab_FW101 ProtectYourKids (last visited Nov. 28, 2011).

has been made,[23] and the double opt-in verification and disclosure requirements of the MMA ensure that a subscriber is made fully aware of the capabilities of their devices. Placing restrictions on companies beyond the requirements of the MMA, as the CPUC suggests, would be onerous, unreasonable, and would improperly elevate the Commission's determinations over those of a parent.

The CPUC's comments were not alone in ignoring the broadly adopted consumer protections enacted by the wireless industry. The National Association of State Utility Consumer Advocates ("NASUCA"), in calling for greater disclosure and express authorization of third-party billing[24] services, ignores that numerous providers already fully inform and describe these services through CTIA's *Wireless Service Consumer Checklist Initiative*.[25] These checklists, offered by all Tier I carriers and more, give consumers the information they need, including information on third-party content and how to block or manage such content, in a clear and concise document separate from a carrier's contract or terms of service.[26] The Commission should reject NASUCA's proposed verification method for third-party billing services, which

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[23] *See, e.g.*, Comments of Verizon and Verizon Wireless, CG Docket No. at 7-8 (Oct. 24, 2011) (highlighting a Verizon Wireless practice of emailing the subscriber when a premium SMS service has been purchased on a device associated with their account).

[24] Comments of NASUCA, CG Docket No. 11-116 at 16 (Oct. 24, 2011).

[25] *See* CTIA-The Wireless Association® Announces "Wireless Consumer Checklist" Initiative, April 5, 2011, *available at* http://www.ctia.org/media/press/body.cfm/prid/2067.

[26] *See* Sprint, *Standardized Wireless Service Checklist*, *available at* http://www.sprint.com/landings/ctiachecklist/docs/ctia-transparency-postpaid.pdf (last visited Nov. 29, 2011); T-Mobile, *T-Mobile Wireless Service Checklist*, *available at*, http://www.t-mobile.com/Cms/Files/Published/0000BDF20016F5DD010312E2BDE4AE9B/5657114502E70FF3012F26C4FD802491/file/TMobile_checklist.pdf (last visited Nov. 29, 2011); Verizon Wireless, *General information*, *available at* http://support.verizonwireless.com/clc/faqs/Wireless%20Service/ctia_checklist.html (last visited Nov. 29, 2011); ATT, *CTIA Wireless Consumer Checklist*, *available at* http://www.wireless.att.com/learn/en_US/pdf/CTIA_Wireless_Consumer_Checklist.pdf?wtSlotClick=1-005AOT-0-1&WT.svl=title (last visited Nov. 29, 2011).

would require a separate and distinct authorization at the start of a customer's wireless service. This would impose cumbersome authorization procedures on consumers and carriers alike without any additional fraud protections, and without, as stated above, any evidence that a problem exists.

Finally, Consumers Union calls for regulatory action to mandate an opt-in procedure while completely ignoring providers' existing double opt-in standard.[27] Consumers Union's comments then conjure up a self-serving effort to equate telephone numbers with credit cards, to support a call that wireless providers be subject to the same requirements as financial firms.[28] But wireless carriers do not operate like financial firms and Consumers Union conveniently ignores the substantial protections that the industry already provides on a voluntary basis.

IV. THE COMMISSION LACKS AUTHORITY TO IMPLEMENT THE RULES PROPOSED IN THE *NPRM*.

As CTIA stated in its initial comments,[29] the Commission lacks legal authority to implement the proposals included in the *NPRM*. It is clear that the Commission does not have authority under the Communications Act to adopt the proposed rules related to SMS and wireless broadband data services, as those services are not considered commercial mobile service, and are, therefore, not subject to common carrier obligations.[30] Additionally, the Commission has

[27] Comments of Consumers Union et al., CG Docket No. 11-116 at 3-4 (Oct. 24, 2011).

[28] *Id.*

[29] Comments of CTIA – The Wireless Association®, CG Docket No. 11-116 at 18 (Oct. 24, 2011).

[30] *See Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks,* Declaratory Ruling, 22 FCC Rcd 5901 ¶ 45 (2007); Comments of CTIA – The Wireless Association®, WC Docket No. 08-7 at 40-44 (March 14, 2008).

already determined that the billing and collection service provided by carriers is not subject to Title II regulation as it is merely a "financial and administrative service."[31]

V. CONCLUSION

No harm has been identified that calls for regulation. Indeed, the record reflects a complaint rate so low it is less than two-thousandths of one percent! Additionally, the comments seeking to impose wireless cramming requirements ignore the significant consumer protections offered by the wireless industry. These include industry best practices, contractual arrangements, and independent carrier action. Taken together, these consumer protections, and the lack of significant wireless cramming complaints, can only lead to one conclusion—saddling the wireless industry with cramming regulations at this time is simply unnecessary.

Respectfully submitted,

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[31] *Detariffing of Billing and Collection Services*, Report and Order, 102 FCC 2d 1150 ¶ 32 (1986).